

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS
OFFICE OF THE CLERK
500 State Avenue, Room 161
Kansas City, Kansas 66101-2417
913/551-6732**

November 17, 2003

**2004 NOTICING CALENDAR
FOR
THE HONORABLE ROBERT D. BERGER**

NOTICING REQUIREMENTS

1. Sources.

You must comply with these noticing and objection deadlines. Most of the important noticing rules are found in Fed. R. Bankr. P. 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee) and 9006 (Time). Appendix A to *Norton Bankruptcy Rules Pamphlet* contains time frames under the rules.

2. Matrix Notices (D. Kan. LBR 2002.1).

The Clerk sends notices to parties listed on a matrix via the Bankruptcy Noticing Center (“BNC”). The matrix addresses are transmitted to the BNC electronically. For successful address transmission to the BNC, the matrix must comply with the requirements of D. Kan. LBR 1007.1(b) and any applicable standing orders. Otherwise, the BNC may be unable to read the addresses correctly and unable to deliver the notices. If this occurs, the BNC will let you know which notices are undeliverable and will point out the underlying matrix deficiency (e.g., incomplete address, missing zip code). Within five (5) days after receiving this notification, you must:

- (1) file a corrected matrix;
- (2) serve any undelivered notices to all parties not served by the BNC; and
- (3) file a certificate of service of the same.

3. The Noticing Calendar.

The Noticing Calendar contains cut-off deadlines, hearing dates, and docket times. The “cut-off

deadline” is the date by which pleadings must be filed for placement on that month’s docket. The Noticing Calendar for 2004 and these instructions supersede prior versions.

Any notice that contains an objection deadline date beyond the date of the cut-off deadline noted on the Noticing Calendar will be considered defective.

Pleadings that require additional noticing time under the Bankruptcy Code and Fed. R. Bankr. P. 2002, or other rules, must comply with these instructions.

If you make an error in noticing a pleading, you must file and serve a corrected notice in accordance with these rules.

4. Noticing Procedure.

To notice a pleading, you must:

- (1) prepare a notice form as set out in paragraphs A or B below;
- (2) serve by first class United States mail, postage prepaid, the motion and notice to opposing counsel, the panel trustee, the United States Trustee, and all parties required by the Rules to be noticed; and
- (3) prepare and file with the Bankruptcy Clerk a Certificate of Mailing in compliance with D. Kan. LBR 9013.3 reflecting service of the pleading and the notice.

Two forms of notice for Judge Berger’s 2004 Motions Docket for nonevidentiary hearings are set forth below. One is a notice that provides for a hearing only if an objection is filed; the other is a notice that sets a hearing even if no objection is filed. You must notice all contested matters (motions, objections, applications, or any other pleading requesting or disputing relief, other than an adversary complaint) according to these instructions.

Motions and applications filed as contested matters under Fed. R. Bankr. P. 9014 must be served as provided in Fed. R. Bankr. P. 7004.

To use the following forms in adversary proceedings, you must modify the caption to comply with Fed. R. Bankr. P. 7010.

A. Notice With Opportunity for Hearing.

To give a notice with opportunity for hearing, you must attach a copy of the following form (Sample A) to your pleading.

Do not insert in the form an objection deadline date beyond the date of the cut-off deadline noted on the Noticing Calendar.

Sample A
(Revised 11/2003)
(No hearing unless objection filed)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

Debtor(s).

Case No. _____

(Use adversary caption if applicable - Rule 7010)

**NOTICE WITH OPPORTUNITY FOR NONEVIDENTIARY HEARING
ON {Name of Pleading} OF {Name of Movant} FOR {Relief Sought}**

NOTICE IS HEREBY GIVEN that if you fail to file a written objection to the above motion with the Clerk of the U. S. Bankruptcy Court at Kansas City, Kansas, on or before **{Actual date of objection deadline}**, the Court will enter an order prepared and submitted by the movant within ten (10) days of the objection deadline and no hearing will be held.

If you file a timely objection, a nonevidentiary hearing will be held before the U. S. Bankruptcy Court, 500 State Avenue, Room 151, Kansas City, Kansas 66101, on _____, _____, at _____m., or as soon thereafter as the Court's schedule permits. If you file an objection, you must appear at the hearing unless you have submitted an agreed order in advance signed by all parties or their counsel.

{Signature, Name and Address of Attorney}

CERTIFICATE OF MAILING

I hereby certify that copies of the Notice With Opportunity for Hearing together with copies of the **{Title of the Pleading}** were deposited in the United States mail, postage prepaid, on _____ **{Date}**

of Mailing __, 20__, addressed to: *{Names and Addresses of Parties} OR {to the persons on the attached Exhibit A to the Notice With Opportunity for Hearing}*.

Signed: _____
{Title, e.g., Attorney for _____}

B. Notice of Nonevidentiary Hearing.

To notice a pleading to a specific docket hearing date, you must attach a copy of the following form (Sample B) to your pleading.

Any notice that contains an objection deadline date beyond the date of the cut-off deadline noted on the Noticing Calendar will be considered defective.

You must mail the notice at least ten (10) working days before the date of the hearing, except when Fed. R. Bankr. P. 2002 requires additional notice time.

You must appear at the hearing unless you have submitted in advance an agreed order signed by all parties or their counsel.

There are special procedural changes that apply to noticing and scheduling the following motions filed in cases assigned to Judge Berger:

- (1) Motion to Reinstate Chapter 13 Case;
- (2) Motion to Reopen Case;
- (3) Motion for Default Judgment;
- (4) Motion to Sell Estate Property Valued at \$2500 or more if Chapter 7 or 11 (Rule 6004(d)).

With any of these motions, you must file a Notice of Nonevidentiary Hearing (Sample B) setting the motion for hearing and providing not less than twenty (20) days notice of the hearing to the Chapter Trustee, United States Trustee, all debtors, all creditors, and all counsel who have entered their appearance in the case. You must personally appear at the scheduled hearing to explain the reasons for the relief you request.

Sample B
(Revised 11/2003)
(Used to set motion on docket)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

Debtor(s).

Case No. _____

(Use adversary caption if applicable - Rule 7010)

**NOTICE OF NONEVIDENTIARY HEARING ON
{Name of Pleading} OF {Name of Movant} FOR {Relief Sought}
SET FOR {Date and Time of Hearing}**

NOTICE IS HEREBY GIVEN that a **nonevidentiary hearing** on the above motion will be held before the U. S. Bankruptcy Court, 500 State Avenue, Room 151, Kansas City, Kansas 66101, on _____, _____, at _____m., or as soon thereafter as the Court's schedule permits.

If you wish to object to the requested relief, you must file your written objection on or before: _____, _____.

{Signature, Name & Address of Attorney}

CERTIFICATE OF MAILING

I hereby certify that copies of the Notice of Nonevidentiary Hearing together with copies of the *{Title of the Pleading}* were deposited in the United States mail, postage prepaid, on *{Date of Mailing}*, 20 , addressed to: *{Names and Addresses of Parties}* OR *{to the persons on the attached Exhibit A to the Notice of Nonevidentiary Hearing}*.

Signed: _____
{Title, e.g., Attorney for} _____

MONTHLY MOTIONS DOCKET

5. Nonevidentiary Hearings.

Hearings scheduled on Judge Berger's Motions Docket are nonevidentiary and allotted a limited time, usually no more than 15 to 20 minutes. If you notice a pleading to the Motions Docket, you must appear to argue your pleading. If you fail to appear, your requested relief may be denied.

Typically, when a pleading noticed to the Motions Docket is brought before the court, one of the following dispositions of the question raised will occur:

- (1) it will be announced as settled;
- (2) it will be continued to a future Motions Docket;
- (3) it will be continued to a Pretrial/Status Conference;
- (4) it will be ruled upon by the Court; or,
- (5) it will be set for evidentiary hearing.

6. Docket Conflicts.

If the time for a first meeting of creditors conflicts with the Motions Docket, the Motions Docket takes precedence. You should inform the case trustee of the conflict and work out an alternative appearance time for the first meeting of creditors.

7. Pretrial/Status Conferences and Evidentiary Hearings.

Under Judge Berger's procedures, Pretrial/Status Conferences are not limited to adversary proceedings. Rather, they are also used for contested matters preliminarily to present evidence or legal research. When the facts and the law permit, the court will rule at the docket call on each matter immediately. If evidence is needed or further study of the facts or law is warranted, the judge may continue

the matter to an Evidentiary Hearing or to a Pretrial/Status Conference.

8. Motions for Relief From Stay.

A. Waiver of Thirty-Day Requirement.

D. Kan. LBR 4001(a).1 addresses waiver of the thirty(30) day limitation on a hearing under §362. If your motion for relief from stay requires a hearing date prior to the Motions Docket, your motion for relief from stay must be accompanied by a motion for expedited hearing and a proposed order. The motion shall set forth with particularity the reasons for requesting an expedited hearing.

B. “Drop-Dead” Clauses.

If you include a “drop dead” clause in an agreement granting conditional stay relief, draft the agreement to provide a 15-day notice period with right to cure in the event of default. This notice must be served on the debtor and, if applicable, debtor’s counsel. If you do draft such a clause, state with particularity the conditions of default so that the court can more easily determine whether a default has occurred under the agreement.

9. Submission of Orders (D. Kan. LBR 9004.1(b)).

A. Information for the Signature Page.

You must include the following information at the top of all signature pages:

- (1) the name of the court
- (2) the case caption, the case number and chapter; and
- (3) the caption of the order and page number.

B. Date Block for Signature.

So that orders may be dated when signed by the judge, include in all orders the following legend just before the judge’s signature block: “Dated this _____ day of _____, 20____.” Leave the date blank.

C. Stipulated Orders Prohibited Without Prior Pleading.

The judge will not sign Stipulated Orders unless you have previously filed a pleading requesting the relief sought in the Stipulated Order.

D. Form of Order for Ruling in Court.

If the court announces a ruling at a hearing, you must include the date of the hearing in the first paragraph of the order memorializing the ruling.

E. Form of Order for Notice With Opportunity.

When you prepare an order on a pleading noticed with an opportunity for hearing, but no objections were filed and no hearing was held, you must so state in the first paragraph of the order, i.e.: (1) that the pleading was noticed with opportunity for hearing, and (2) that no objections were filed and no hearing was held.

F. Time for Submission of Orders.

Within ten (10) days after a hearing date or an objection deadline, you must submit to the Clerk an original and three (3) copies of an order for approval by the Court. The Clerk monitors the timely submission of all orders. If you fail to submit an order within ten (10) days of the hearing or objection deadline, your pleading may be dismissed for lack of prosecution or the court may take other action.

If you cannot meet a deadline, you must file a Motion for Extension of Time before the deadline passes and state the reasons for your request. The motion must be accompanied by a proposed Order Granting Extension of Time.

You must mail orders to the Clerk of the Bankruptcy Court, not to the Judge.

/s/ ROBERT D. BERGER
UNITED STATES BANKRUPTCY JUDGE